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FISCAL IMPACT REPORT

SPONSOR Park DATE TYPED 3/8/05 HB 357/aHGUAC

SHORT TITLE Lead-Based Paint Management Act SB _____

ANALYST Hadwiger

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	None		\$250.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Environment (NMED)

Public Education Department (PED)

SUMMARY

Synopsis of HGUAC Amendment

The HGUAC amendment would eliminate an exemption for railroad bridges owned or leased by a railroad. The amendment adds a penalty whereby a person who performs lead-based paint services without a certification or accreditation from NMED would be guilty of a petty misdemeanor. The amendment also would sunset the Act effective July 1, 2010.

Synopsis of Original Bill

House Bill 357 would adopt the Lead-Based Paint Management Act and establish a state Lead-

Based Paint Management Program that provides for certification and accreditation of certain lead-based paint professionals to abate and reduce lead exposure primarily due to lead-based paint in homes and businesses. HB357 authorizes the Environmental Improvement Board (EIB) to adopt rules governing the program's activities, but that are no more restrictive than the federal Residential Lead-Based Paint Hazard Reduction Act of 1992, including:

1. establishing a certification a program for lead-based paint contractors
2. requiring certification of lead-based paint reduction contractors, lead-based paint inspectors, hazard evaluators or specialists performing lead-based paint services on target housing and child-occupied facilities prior to the performance of any of those services;
3. providing for accreditation of approved training programs located in this state;
4. setting standards for performing lead-based paint services, including reliability, effectiveness and safety;
5. requiring that all lead-based paint training programs shall include a hands-on component and instruction on the health effects of lead exposure, the use of personal protective equipment, workplace hazards and safety problems, reduction and abatement methods and work practices, decontamination procedures, cleanup and waste disposal procedures, lead monitoring and on-site testing methods and legal rights and responsibilities; and
6. identifying guidelines, based on federal regulations, for the determination of adverse human health effects posed by lead-based paint hazards;

The EIB would establish fees for certification and accreditation and other program aspects. It would also provide specified exemptions.

The Department of Environment (NMED) would administer the program. HB357 also provides for a lead-based public information program.

Significant Issues

According to NMED, lead poisoning can cause permanent damage to the brain and many other organs, and causes reduced intelligence, behavioral problems, and other developmental disabilities. It can also cause abnormal fetal development. The primary mode of ingestion of lead is consuming paint chips. Approximately 75 percent of the nation's housing built before 1978 (approximately 64 million dwellings) contains some lead-based paint. Approximately 1.7 million children have blood-lead levels above safe limits, mostly due to lead-based paint exposure. While the federal government banned lead-based paint many years ago, many of these dwellings could still pose a risk to our children.

NMED indicated that HB357 provides consumer and public health protection by requiring certification of lead-based paint contractors, specialist or professionals to prevent "fly-by-night" consultants, contractors, or individuals who have not satisfactorily completed a certification course from conducting such abatement, decontamination, removal, or disposal of lead-based paint from housing. The certification program would establish a listing of contractors that will take the appropriate cautionary measures in abating lead-based paint. In addition, the accreditation of laboratories would ensure the appropriateness of the chemical analyses of paint waste for individuals requesting such services. Consumers would also be made aware of important health and safety information. HB357 also provides for training of professionals and state regulators. The bill also institutes a public information program on significant exposures to lead-based paint hazards. The outreach would provide information on the children at risk under the age of six, pregnant women, women of childbearing age, persons with respiratory disease, home renovations, target

housing, and health professionals. Currently the Health Department provides for limited public education through literature, consultation with the public, and those living in targeted housing.

The HGUAC amendments address two concerns raised by NMED with regard to the original bill. However, NMED recommended alternative sanctions for violators (see Other Substantive Issues section below.)

The Public Education Department (PED) indicated that this bill could affect that agency by requiring a building or portion of a building constructed prior to 1978 that is visited by a child age six or younger for at least three hours in one day on two or more days in a calendar week to have lead-based paint evaluations be in compliance with the Residential Lead-Based Paint Hazard Reduction Act of 1992. Currently, there are 27,600 registered pre-k and kindergarten students in the state. Affected child-occupied facilities would include daycare centers, preschools and kindergarten classrooms.

FISCAL IMPLICATIONS

NMED indicated they would require at least five full-time employees to administer the program. The program costs might be offset by fee revenues and/or federal revenues. NMED asked that the bill be amended to deposit the program revenues in a dedicated fund for his program. It should be noted that the LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

PED was concerned that this bill might result in significant costs for school improvements. PED noted that, currently, all state school buildings are inspected and indexed by the Public Schools Facilities Authority (PSFA) as to adequacy standards, critical health or safety issues. The PSFA 3DI database does not have established criteria for lead-based paint. Current estimates list the total cost of bringing all school buildings to minimum adequacy standards at \$2,300,000.0. This amount will increase if schools buildings were determined to contain unsafe levels of lead-based paint and have to be abated. This increase would be passed on to both the state and the school districts because districts that receive awards from the state will be responsible to provide a local match of the project that will be determined by the state match distribution formula.

PED also noted that the bill may affect buildings that are privately owned or leased to districts for full-day kindergarten programs or for districts with charter schools. Currently many charter schools are housed in leased facilities that require improvements to meet state minimum requirements for adequacy, critical health or safety issues. According to PED, approximately 75% of the nation's housing built prior to 1978 (approximately 64 million dwellings) contain some lead-based paint. Approximately 1.7 million children have blood-lead levels above safe limits, mostly due to lead-based paint exposure. If private owners of facilities must comply and abate their buildings they may pass on these expenses by raising the costs of their leases.

ADMINISTRATIVE IMPLICATIONS

According to NMED, HB357 would create a new State program which would require new FTEs due to the specific nature of program. A reasonable amount of resources would be directed toward staff time to propose rules to the Environmental Improvement Board for promulgation of training, certification and fees requirements; development and maintenance of a certification and

accreditation program; and the development of outreach materials. The development of training and certification would effectively need to be established through a contractual service with expertise in the lead-base paint abatement field. The program could effectively be implemented within six months upon promulgation of rules. Program outreach could be immediate upon hiring staff and subsequent development of materials.

NMED also noted that the HGUAC amendments would require prosecution under the penalty provisions in magistrate court. This would have a significant administrative impact, as NMED generally uses its civil penalty authority to address egregious violators.

OTHER SUBSTANTIVE ISSUES

NMED recommended the following alternative penalties be considered:

On page 17, between line 18 and 19, in 4th HGUAC amendment, delete stricken and insert underlined language as follows:

“Section 12. PENALTY.—Whenever on the basis of any information the secretary determines that any person has violated, is violating or threatens to violate any requirement of the Lead-Based Paint Management Act, any rule adopted and promulgated pursuant to that act, any condition or a certification or accreditation issued pursuant to that act, or A person who performs lead-based paint services without a certification or accreditation from the department, the secretary may: is guilty of a petty misdemeanor and shall be sentence pursuant to Section 31-19-1 NMSA 1978 , and insert in lieu of

- (1) issue a compliance order stating with reasonable specificity the nature or the violation or threatened violation and requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation, or both; or
- (2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

B. Any order issued pursuant to this section may include a suspension or revocation any certification or accreditation issued by the secretary. Any penalty assessed in the order shall not exceed five thousand dollars (\$5,000) per day of noncompliance for each violation. In assessing the penalty, the secretary shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements.

C. If a violator fails to take corrective actions within the time specified in a compliance order, the secretary may:

- (1) assess a civil penalty of not more than ten thousand dollars (\$10,000) for each day of continued noncompliance with the order; and
- (2) suspend or revoke any certification or accreditation issued to the violator pursuant to the Lead-Based Paint Management Act.

D. Any order issued pursuant to this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the secretary for a public hearing. Upon such request, the secretary shall promptly conduct a public hearing. The secretary shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward his recommendation based on the record to the secretary, who shall make the final decision.

E. In connection with any proceeding under this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may promulgate rules for discovery procedures.

F. Penalties collected pursuant to an administrative order shall be deposited in the state treasury to be credited to the Lead-Based Paint Management Fund.

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